

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
vs.)	Crim. No. 07-05-01 Erie
)	
)	
MICHAEL CARL BROOKS)	

ORDER

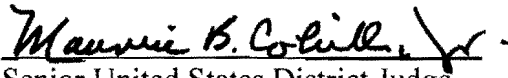
Before the Court is Defendant Michael Brooks' "Motion For Court to Consider Sentence Reduction in Light of the 1 to 1 Crack Legislation H.R. 3245," in which he requests that we reduce his sentence based on the anticipated passage into law of a House of Representatives Bill. (Doc. 101). Essentially, Defendant seeks a reduction of his sentence through the retroactive application of a 1-to-1 crack-to-powder ratio to his case.

We first note that we are without jurisdiction to consider a modification of sentence other than as a timely filed motion brought pursuant to 28 U.S.C. § 2255. In any event, Congress has not passed a law regarding the sentencing differences between crack and powder cocaine. This Court has recently applied a 1-to-1 crack-to-powder ratio in crack cocaine sentencings, but this is only lawfully applicable to defendants who are presently before the court for sentencing. No new rule was issued in the cases in which we did apply a 1-to-1 crack-to-powder ratio; instead the Court exercised its discretionary power to vary from the Sentencing Guidelines related to crack cocaine, as recognized by Kimbrough v. United States, 552 U.S. 85 (2007), and Spears v. United States, ___ U.S. ___, 129 S.Ct. 840, 172 L.Ed.2d 596 (2009) (per curiam). As such, applying a 1-to-1 crack-to-powder ratio is not to

be applied retroactively, absent a statutory change from Congress or a directive from a higher court.

Accordingly, we will deny Mr. Brooks' Motion.

AND NOW, to-wit, this 17th day of December, 2009, for the reasons stated above, it is hereby ORDERED, ADJUDGED, and DECREED that Michael Carl Brooks' "Motion For Court to Consider Sentence Reduction in Light of the 1 to 1 Crack Legislation H.R. 3245," be and hereby is DENIED.


Senior United States District Judge
Maurice B. Cohill, Jr.

cc: counsel of record

Michael Carl Brooks
No. 20492-068
FCI Elkton
P.O. Box 10
Lisbon, OH 44432